

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Paul V. Jaros and Jeanne M. Jaros,

Debtors: Chapter 7 Case
Case No. BKY 04-60946-DDO.

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY**

TO: The Debtors, Debtors' Attorney, Chapter 7 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 9013-3(a).

1. **JP Morgan Chase Bank as Trustee (Movant)**, a secured creditor of the Debtors herein, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 1:00 o'clock p.m., on October 26, 2004, before the Honorable Dennis D. O'Brien in Court Room 2, U.S. Post Office Building, 118 South Mill Street, Fergus Falls, MN or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than October 21, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 15, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2 and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtors and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 7 Case was filed on August 11, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated September 3, 2003, in the original principal amount of \$114,325.00 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

The South 20 acres of the following tract: That part of Government Lots 4 and 5, lying southeast of the southeast boundary of the right-of-way of State Highway No. 210, as it presently exists, in Section 5, Township 132, Range 42.

The Mortgage was filed for record in the office of the County Recorder, in and for Otter Tail County, Minnesota, on September 19, 2003, as document number 939293.

7. The subject property has a market value of \$145,000.00. Furthermore, the subject real estate is encumbered in the amount of \$6,164.01 by other mortgage(s) and/or lien(s). The total amount of debt secured by the subject property is \$122,829.54, including Movant's mortgage. Hence, Debtors have little or no actual equity in the property.

8. Debtors' Three (3) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

WHEREFORE, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 23rd day of September, 2004.

PETERSON, FRAM AND BERGMAN

A Professional Association

BY: /e/ Michael T. Oberle

Michael T. Oberle, Atty. Reg. #130126

Attorneys for Movant

Suite 300, 50 East Fifth Street

St. Paul, Minnesota 55101-1197

Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Paul V. Jaros and Jeanne M. Jaros,

Debtors: Chapter 7 Case
Case No. BKY 04-60946-DDO.

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

STATE OF NEW JERSEY)
) ss.
COUNTY OF BURLINGTON)

I, Steffany Porter, your affiant, being first duly sworn on
oath, state as follows:

1. I am an employee of Equity One, Inc. , the company which is the duly
authorized loan servicer for the subject mortgage which is held by **JP Morgan Chase Bank
as Trustee (Movant)**, and I have personal knowledge of the facts stated herein.

2. I make this Affidavit in support of a motion to lift, modify or condition the
bankruptcy stay.

3. Debtors are the mortgagors on a mortgage dated September 3, 2003 which covers real property located in Otter Tail County and legally described as follows:

Section 5, Township 132, Range 42,

and which is commonly known as: 24216 State Highway 210, Fergus Falls, MN 56537.

The mortgage was given to secure a promissory note. Copies of the note and the mortgage are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by this reference. The mortgage was assigned to Movant.

4. On or about August 11, 2004, Debtors filed a Petition under Chapter 7 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Debtors have failed to make Three (3) payments, resulting in an arrearage of \$2,598.04, including late charges. The total mortgage debt is \$116,665.53, which includes accrued interest through September 30, 2004. Thereafter, interest accrues on the unpaid principal balance at \$24.85 per day. Movant has also incurred attorney's fees and costs in the bringing of this motion.

6. Based upon information and belief, the subject property has a market value of \$145,000.00. Furthermore, it is believed that the subject real estate is encumbered in the amount of \$6,164.01 by other mortgage(s) and/or lien(s). The total amount of debt secured by the subject property is \$122,829.54, including Movant's mortgage.

7. I have read the Motion in this matter, and it is true to the best of my knowledge,
information and belief.

8. Further, I saith not.

St. James Carter

Subscribed and sworn to before me
this 15 day of September, 2004.

Sherri B. Matthews
Notary Public

SHERRI B. MATTHEWS
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/10/2009

LOAN NO. 03001059

ADJUSTABLE RATE NOTE

(LIBORS Six-Month Index (As Posted By Fannie Mae) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

SEPTEMBER 3, 2003

[Date]

[City]

[State]

24216 STATE HWY 210
FERGUS FALLS, MN 56537

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 114,325.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is MORTGAGE EXPRESS, INC.

CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.990 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 8TH day of each month beginning on OCTOBER 8, 2003. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on SEPTEMBER 8, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

MORTGAGE EXPRESS, INC., 801 N. Cass Ave. Suite 300, Westmont, IL 60559
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 838.08. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 8TH day of SEPTEMBER, 2005, and on that day every 6TH month thereafter. Each date on which my interest rate could change is called a "Change Date."

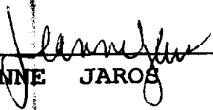
(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London marked based on quotations of major banks, as posted by Fannie Mae through electronic transmission or by telephone or both through electronic transmission and by telephone. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, or is no longer posted either through electronic transmission or by telephone, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

LOAN NO. 03001059

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

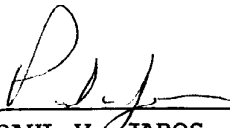


JEANNE JAROS (Seal)
-Borrower

Social Security Number 473-62-9784

(Seal)
-Borrower

Social Security Number _____



PAUL V JAROS (Seal)
-Borrower

Social Security Number 472-60-3570

(Seal)
-Borrower

Social Security Number _____

[Sign Original Only]

12
 Sept. 19, 2003 No. 178667
 Registration tax paid 262.00
 \$ 262.00
 Otter Tail County Treasurer

WHEN RECORDED MAIL TO:
 MORTGAGE EXPRESS, INC.
 801 N. Cass Ave. Suite 300
 Westmont, IL 60559

LOAN NO.: 03001059

[Space Above This Line For Recording Date]

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **SEPTEMBER 3, 2003**, together with all Riders to this document.

(B) "Borrower" is
JEANNE JAROS AND PAUL V. JAROS, WIFE AND HUSBAND

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is **MORTGAGE EXPRESS, INC.**

Lender is a **CORPORATION**

organized and existing under the laws of

THE STATE OF ILLINOIS

.418C

Lender's address is **801 N. CASS AVE., SUITE 300**

WESTMONT, IL 60559

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **SEPTEMBER 3, 2003**

The Note states that Borrower owes Lender

ONE HUNDRED FOURTEEN THOUSAND THREE HUNDRED TWENTY-FIVE AND 00/100

Dollars (U.S. \$ **114,325.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **SEPTEMBER 8, 2033**

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

MINNESOTA • Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
 Form 3024 1/01
 Lender Forms Inc. (800) 446-3866
 LH #FOMA3024 1/01 (A)

Page 1 of 13

Initials: *JP*

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

JEANNE JAROS (Seal)
-Borrower

PAUL V. JAROS (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Space Below This Line For Acknowledgment]

STATE OF MINNESOTA,

Other-Tail

County ss:

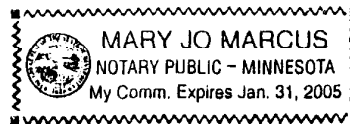
On this 3rd day of September 20 03, before me appeared
JEANNE JAROS AND PAUL V. JAROS, WIFE AND HUSBAND

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.

- Notary Public

My Commission expires: 1-31-05

This instrument was prepared by:
SYLVIA ARIAS



Tax statement sent to:

939293

**OFFICE OF COUNTY RECORDER
OTTER TAIL MINNESOTA**

I hereby certify that
this instrument # **939293**
was filed/recorded in this office
for record on the 19 day of
Sept 2003 at 10:20 am/pm
Wendy L. Metcalf, County Recorder
by: Wendy L. Metcalf Deputy
W. Metcalf recording fee
well certificate

NMF

MORTGAGE

This attachment is for recording purposes only and does not alter the document attached hereto.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Paul V. Jaros and Jeanne M. Jaros,

Debtors: Chapter 7 Case
Case No. BKY 04-60946-DDO.

MEMORANDUM OF LAW

JP Morgan Chase Bank as Trustee (**Movant**) submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on certain real property owned by Debtors. The Debtors are delinquent with respect to payments due under the mortgage for the months of July 2004 through August 2004 in a total amount of \$2,598.04, including late charges. The total mortgage debt is \$116,665.53, which includes accrued interest through September 30, 2004. Thereafter, interest accrues on the unpaid principal balance at \$24.85 per day.

The subject property has a market value of \$110,000.00. Furthermore, the subject real estate is encumbered in the amount of \$6,164.01 by other mortgage(s) and/or lien(s). The total amount of debt secured by the subject property is \$122,829.54, including Movant's mortgage.

ARGUMENT

Under §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. §362(d)(1). Debtors have failed to make payments due under the terms of the mortgage for a period of over Three (3) months. Debtors have little or no actual equity in the property; hence, Movant lacks adequate protection in the form of an equity cushion in the property. Furthermore, debtors have otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 23rd day of September, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle
Atty. Reg. #130126

Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101
Telephone: (651) 291-8955

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Paul V. Jaros and Jeanne M. Jaros,

**Debtors: Chapter 7 Case
Case No. BKY 04-60946-DDO.**

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Michael T. Oberle, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on September 23, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee
300 S 4th St # 1015
Minneapolis MN 55415-1329

Jeanne M. Jaros
710 East Summit Avenue
Fergus Falls, MN 56537

Paul V. Jaros and
Jeanne M. Jaros
24216 State Highway 210
Fergus Falls, MN 56537

David G. Velde
Chapter 7 Trustee
1118 Broadway
Alexandria, MN 56308

Jason M. Hastings, Esq.
213 South Mill Street
Fergus Falls, MN 56537

And I declare, under penalty of perjury, that the foregoing is true and correct.

Signed: /e/ Michael T. Oberle

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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ORDER FOR RELIEF FROM AUTOMATIC STAY

The above-entitled matter came before the Court on October 26, 2004, on the motion of JP Morgan Chase Bank as Trustee (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated September 3, 2003, filed for record in the office of the County Recorder in and for Otter Tail County, Minnesota, on September 19, 2003, and recorded as Document No. 939293 and covering real property located in Otter Tail County, Minnesota, which is legally described as follows:

The South 20 acres of the following tract: That part of Government Lots 4 and 5, lying southeast of the southeast boundary of the right-of-way of State Highway No. 210, as it presently exists, in Section 5, Township 132, Range 42, Otter Tail County, Minnesota.

Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated this ____ day of _____, 2004.

-

Dennis D. O'Brien
United States Bankruptcy Judge